

**Operating Procedure for Berkshire Division of the Probate and Family Court  
Under Standing Order 1 – 21, effective July 12, 2021**

A. General information:

Effective July 12, 2021, the Probate and Family Court will be open to conduct all emergency and non-emergency court business in person, except for the matters identified in Paragraph C below and any matter that a judge determines shall be held virtually.

The ability to conduct in-person hearings depends upon successful compliance with all safety protocols established by the Trial Court, including, but not limited to, Trial Court occupancy limits.

Parties may file pleadings by US mail, in person, or by e-filing where available. Email filings will be accepted when done so by a Court Service Center staff member or by an attorney volunteering through a Lawyer for the Day program on behalf of a self-represented litigant or if specifically authorized by the Supreme Judicial Court or the Executive Office of the Trial Court. Other email filings may be allowed at the discretion of each Register of Probate. Drop boxes may be available to file pleadings in some court locations.

Filings by email will continue to be accepted only as noted above or for emergency (or short order notice) hearings in situations when time does not permit filing by other means in cases where e-filing is unavailable, or as otherwise permitted by the judge. Email filings may be sent to [berkshireprobate@jud.state.ma.us](mailto:berkshireprobate@jud.state.ma.us). Questions about email filings may be directed to Register Anthony Patella or Assistant Register Clem Ferris at the above email address or at (413) 442-6941.

The drop-box is located at the front door of the Registry, inside the vestibule, and is emptied once daily. If your filing is time sensitive, please call the Registry at (413) 442-6941 and notify staff before leaving your filing in the drop-box. Questions about drop-box filings may be directed to Register Anthony Patella or Assistant Register Clem Ferris at (413) 442-6941.

Electronic signatures will continue to be used, consistent with the current order of the Supreme Judicial Court, unless and until otherwise amended by subsequent orders or rules.

Virtual registries may continue to be used. Virtual registries offer all of the assistance normally available during an in-person visit, including face-to-face contact, the ability to obtain and get assistance with court forms, and access to court documents and docket information. [Information about virtual registries can be found here.](#)

Berkshire Probate and Family Court does not currently operate a virtual registry.

B. In-Person Proceedings:

As of July 12, 2021, the Probate and Family Court will expand the scheduling of in-person hearings for all matters, except for the matters identified in Paragraph C below and any matter that a judge determines shall be held virtually. In-person hearings will be scheduled for the next available date and will be conducted on a staggered schedule.

Staggered scheduling for Berkshire Probate and Family Court will be updated as available.

Questions about scheduling process for in-person hearings may be directed to JCM Lisa McCormack at (413) 442-6941.

If notice has already gone out and a matter is scheduled for a virtual hearing on or after July 12, 2021, the matter will still be held virtually unless the assigned judge determines the matter should be heard in person and the parties are notified of such change.

Where an in-person hearing is scheduled, a party may request that the hearing be conducted virtually, and the judge will rule on the request.

If a party wishes to request a virtual hearing, they may do so by filing a Motion setting forth the reasons for the request, with notice to the other side. Virtual attendance shall be allowed upon good cause shown. Motions shall be filed in accordance with the time and notice requirements laid out in the Rules unless emergent circumstances apply. These motions will be acted on administratively unless the Court determines otherwise. Questions about filing a motion to request a virtual hearing may be directed to Register Anthony Patella or JCM Lisa McCormack at (413) 442-6941.

Alternatively, a judge, upon request, may authorize a participant (an attorney, party, or witness) to appear virtually while other participants appear in person, so long as it is consistent with due process and fundamental fairness. A participant who requests to appear virtually for an otherwise in-person proceeding shall have no grounds to object to other participants appearing in person.

If a party wishes to request a virtual appearance at an in-person hearing, they may do so by filing a Motion setting forth the reasons for the request, with notice to the other side. Virtual attendance shall be allowed upon good cause shown. Motions shall be filed in accordance with the time and notice requirements laid out in the Rules unless emergent circumstances apply. These motions will be acted on administratively unless the Court determines otherwise. Questions about filing a motion to request a virtual appearance may be directed to Register Anthony Patella or JCM Lisa McCormack at (413) 442-6941.

C. Virtual Proceedings:

The following matters shall be held virtually and on a staggered schedule:

1. Uncontested adoptions, unless the assigned judge determines that the matter should be heard in person;
2. Uncontested divorces;
3. Rogers reviews;
4. Best efforts § 29B annual reviews – DCF custody;
5. Any action involving child support only, except for contempt actions;
6. Case Management/Status conferences; and
7. Discovery motions.

Such matters will be scheduled to take place in the assigned judge's virtual courtroom on a staggered basis at half hour intervals.

Changes to staggered scheduling for virtual matter in Berkshire Probate and Family Court will be updated as available.

Matters that are generally handled administratively (e.g., marriage without delay; joint modification); uncontested/assented to motions (e.g., appointment of GAL; continue date of hearing; file marriage certificate late); and uncontested/routine allowables in probate actions (e.g., informal petition; transfer of guardianship or conservatorship from another state; accounts; appointment of GAL; license to sell; alternative service; waiver of sureties; motion to file death certificate late) will continue to be handled administratively. If such a matter is not handled administratively, a virtual hearing will be scheduled.

In the absence of exceptional circumstances, as determined by the judge conducting the hearing, no party or attorney for a party may be physically present in the courtroom for a scheduled virtual hearing.

However, in cases with one or more self-represented litigants, judges shall consider the possibility that self-represented litigants may have limited access to the technology needed or limited experience with such technology and either assist the self-represented litigant or offer the option to appear in person.

A judge may also consider matters through an administrative review process and determine motions in accordance with Rule 78.

D. Protocol in the event of a court closure by the Trial Court:

**REGISTRY**

- a. With the agreement of the First Justice of the District Court, all 209A matters shall be referred to the District Court on-call Judge.
- b. The following emergency contact information shall be prominently placed on the entry door of the building.

- i. Emergency phone number: (857) 319-7004.
  - ii. Emergency email address: [berkshireprobate@jud.state.ma.us](mailto:berkshireprobate@jud.state.ma.us)
- c. Any member of the “Team”<sup>1</sup> shall access both the Registry phone messages and emails regularly throughout the closure to triage emergencies.
- d. Whenever possible, a member of the Team shall work with the litigant or attorney to complete the appropriate paperwork online and email it to [berkshireprobate@jud.state.ma.us](mailto:berkshireprobate@jud.state.ma.us) or if available, to e-file the paperwork. If the person is unable to do this, the Team member shall ask the litigant to make the request in writing in an email and send it to [berkshireprobate@jud.state.ma.us](mailto:berkshireprobate@jud.state.ma.us). In the event the person has no access to email, the Team member shall assist the litigant by filling out the necessary paperwork over the phone.
- e. The Team member shall ensure that the following information is gleaned from the litigant and/or Masscourts:
- 1. Names, phone numbers, email addresses and residential addresses of both the moving party and the adverse party;
  - 2. Where appropriate identifying information in order to run a CARI: dates of birth, mother’s maiden name; social security numbers
  - 3. Docket number of any open or closed case involving the parties;
  - 4. If the case is open, what is the status of the case, including the last Order and the next scheduled date;
  - 5. The terms and dates of any existing Order;
  - 6. Whether or not there is an active 209A Order in existence between the parties; and
  - 7. Whether or not DCF is involved with the family.

The moving party shall be told to follow through with filing original documents for later filing and docketing.

- f. Team member shall determine procedurally, in conjunction with the Judge, whether the case shall go forward with or without notice. If the case is going to proceed without notice, the Team member shall contact Chief Probation Officer, Amy Koenig.
- g. If Probation is able to resolve the matter with an agreement and it would be beneficial to have the parties’ agreement become an Order, Probation shall contact the Team member, who in turn will contact Judge Simons.
- h. The Chief Probation Officer shall request from one of her colleagues that CARIs be run for the parties. If DCF is involved, Probation shall arrange with

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<sup>1</sup> The Team consists of Register Anthony Patella, Asst Register Clem Ferris and JCM Lisa McCormack. The Team will have its own system of rotating responsibilities.

DCF to have the appropriate social worker available to testify in the emergency hearing. Amy shall ensure the CARI information and DCF contact information is forwarded to the Team member.

- i. Prior to any hearing, all information, including the moving parties' telephone number, the opposing parties' telephone number, DCF contact information, CARI information, and any pleadings/emails shall be forwarded to Judge Simons by email.
- j. If Judge Simons deems the matter to be an emergency requiring a hearing, all reasonable attempts shall be made to conduct a hearing by Zoom and recorded on a Trial Court issued laptop. This recording shall later be uploaded to FTR when practical. Judge Simons shall administer an oath to all parties who testify.
- k. The Team member shall assist the Judge with processing any resulting Order. The Order shall be saved and distributed as an un-editable PDF and the typed signature of the Judge shall suffice for the entry of the Order until such time as the Order may be signed and docketed.
- l. At no time shall the private contact information for any Registry, judicial or Probation staff be disclosed to any litigant, attorney or other individual.

#### **EMERGENCY JUDGE**

- m. In absence of unforeseen circumstances, Judge Richard A. Simons shall be the emergency judge for the Berkshire Division.

#### **E. Contact Information:**

Emergency phone number	(857) 319-7004	
Emergency email address	berkshireprobate@jud.state.ma.us	
Registry phone number	(413) 442-6941	
Probation contact	Amy Koenig	<a href="mailto:Amy.koenig@jud.state.ma.us">Amy.koenig@jud.state.ma.us</a> (413) 445-0638
Judicial Case Manager	Lisa McCormack	<a href="mailto:Lisa.mccormack@jud.state.ma.us">Lisa.mccormack@jud.state.ma.us</a> (413) 445-0613
Sessions Clerk: Judge Simons	Joan Oggiani	<a href="mailto:Joan.oggiani@jud.state.ma.us">Joan.oggiani@jud.state.ma.us</a> (413) 445-0614
Sessions Clerk: Judge Dacyczyn	Lisa Marcotte	<a href="mailto:Lisa.marcotte@jud.state.ma.us">Lisa.marcotte@jud.state.ma.us</a> (413) 445-0615

F. Additional Information:

Berkshire Probate and Family Court has a lawyer of the day that is held, virtually, on Thursday's from 9AM -12PM. Appointments are made in 30 minute blocks. The program may be accessed through zoom as follows:

<https://www.zoomgov.com/j/16182274108>

Meeting ID: 161 8227 4108

Passcode: 055947

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)